

## **EXHIBIT 4**

# Holland Knight

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Ms. Griffin's experience includes the representation of contractors, sureties, banks and bank regulators in loan and contract default situations, both before and during litigation or bankruptcy proceedings. She is an active member of the National Association of Women in Construction and the American Bar Association. Since 1984, Ms. Griffin has served on the Governing Committee of the ABA's Forum on the Construction Industry and has been a vice chair of the Fidelity and Surety Law Committee of the ABA's Torts and Insurance Practice Section. She is a fellow of the American College of Construction Lawyers. She lectures and writes nationally on bankruptcy, construction law and complex litigation topics. Ms. Griffin is a professionally trained mediator and is on the National Construction Panel of Arbitrators for the American Arbitration Association.



Ms. Griffin is admitted to practice in the state of New York and the Commonwealth of Massachusetts, as well as the U.S. Tax Court, the United States Court of Appeals for the First Circuit and the United States District Courts for the District of Massachusetts and the Southern District of New York.

Ms. Griffin attended Bryn Mawr College, where she received her Bachelor of Arts degree *cum laude* in 1971. She earned her J.D. in 1974 from Boston University, where she was Member of Law Review.

## TEACHING AND SPEAKING ENGAGEMENTS

American Bar Association, Baltimore, November 2005: Managing the Contract Bond Default, sponsored by Fidelity and Surety Law Committee of Tort and Insurance Practice Section.

Lorman Education Services, various locations in Boston Area, October-November 2005: seminar on Massachusetts Building Code.

American Bar Association, San Antonio, May 2005: Managing the Contract Bond Default, sponsored by Fidelity and Surety Law Committee of Tort and Insurance Practice Section.

American Bar Association, New York, planned January, 2003: program co-chair: Twenty-Five Years Under the Bankruptcy Code: Sureties' Lessons in Coping Survival and Success, sponsored by Fidelity and Surety Law Committee of Tort and Insurance Practice Section.

## Page 2

Lorman Education Services, various locations in Boston Area, March 1999-2002: seminar on Massachusetts Mechanics Lien and Bond Law.

American Bar Association, Hilton Head, May 1999: program co-chair for Surety Claim Workshop sponsored by Fidelity and Surety Law Committee of Tort and Insurance Practice Section.

American Bar Association, San Diego, April 1998, and Philadelphia, October 2000: Managing and Litigating the Complex Surety Case Program: Organizing and Controlling the Massive Document/Deposition Case sponsored by Fidelity and Surety Law Committee of Tort and Insurance Practice Section.

American Bar Association, Chicago, October 1997; Atlanta, April 1996; Los Angeles, March, 1996; and New York, May, 1995: Bond Default Program: Completion by the Owner, sponsored by Fidelity and Surety Law Committee of Tort and Insurance Practice Section.

American Bar Association, New York, October 1996: Termination Program: Post-Termination Bankruptcy Considerations for the Defaulted Contractor, sponsored by Fidelity and Surety Law Committee of Tort and Insurance Practice.

National Association of Women in Construction, Boston, June, 1993: Dispute Resolution Alternatives in Construction.

American Bar Association, New York, January, 1993: Co-Chairman for program on construction financing, sponsored jointly by Fidelity & Surety Law Committee of Torts and Insurance Practice Section and Forum on the Construction Industry.

New England Bond Claims Association, October, 1992: Subdivision Bonds

New England Bond Claims Association, June, 1991: Construction Surety's Exposure to Bankruptcy Preference Liability

National Association of Women in Construction, Minneapolis, September 1990: Documenting and Presenting Construction Claims

American Bar Association, New York, January, 1989: Chairman for program on problems relating to bankruptcy problems in the construction field, sponsored jointly by Fidelity & Surety Law Committee of Tort and Insurance Practice Section and Forum on the Construction Industry.

Flaschner Institute, November 1988 and February 1989: selected to participate in mock trial demonstration, teaching Massachusetts State Court judges rules of damages in construction litigation.

American Bar Association, New York, January, 1983: Speaker in program on Bankruptcy Code and the Construction Industry, sponsored jointly by Fidelity & Surety Law Committee of Torts and Insurance Practice Section and Forum Committee on the Construction Industry.

## PUBLICATIONS

Chapter Author, *Bond Default Manual: Completion by the Owner*, American Bar Association, (2<sup>nd</sup> Ed. 1995) (3<sup>rd</sup> Ed. 2005).

Editor and contributing author, *The Most Important Questions a Surety Can Ask About Bankruptcy, Second Edition*, (American Bar Association, January, 2003).

Chapter Co-Author, *Managing and Litigating the Complex Surety Case Program: Organizing and Controlling the Massive Document/Deposition Case*, sponsored by Fidelity and Surety Law Committee of Tort and Insurance Practice Section, American Bar Association, 1998.

Author, *Post-Termination Bankruptcy Considerations for the Defaulted Contractor*, 17 *Construction Lawyer*, 1 (January 1997).

National Association of Women in Construction, Boston Chapter 15, January 1994-present: Column entitled "Legal Angles" in quarterly magazine.

Chapter on "Payment Bonds," Construction Defaults published in 1989 by John Wiley & Sons.

Author, *Unfair Inducement of Surety to Issue Bonds: An Expansion of the Surety's Salvage Option*, 5 *Construction Lawyer* 1 (Spring, 1984).

Author, *General Contractor in Wonderland: Selected Problems in Reorganization Under the Bankruptcy Code*, 4 *Construction Lawyer*, 1 (Summer and Fall, 1983).

## **EXHIBIT 5**

Lee P. Dore

04/13/2005

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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS: CENTRAL DIVISION

AMERICAN MANUFACTURERS \*  
MUTUAL INSURANCE COMPANY \*

vs.

\* CASE NO. 03-40266 CBS

TOWN OF NORTH BROOKFIELD \*

D E P O S I T I O N

OF

LEE P. DORE

Taken on behalf of the Plaintiff on Wednesday  
April 13, 2005 at the offices of  
Dore and Whittier, So. Burlington, Vermont.

APPEARANCES:

DEBORAH S. GRIFFIN, ESQ., of the firm Holland &  
Knight, 10 St. James Avenue, 11th Floor, Boston,  
MA 02116, appeared and represented the Plaintiff.

THOMAS W. MCENANEY, ESQ., of the firm Kopelman and  
Paige, P.C., 31 St. James Avenue, Boston, MA  
02116, appeared and represented the Defendant.

MATTHEW M. O'LEARY, ESQ., of the firm Donovan  
Hatem LLP, World Trade Center East, Two Seaport  
Lane, Boston, MA 02210, appeared and represented  
the Deponent.

COURT REPORTER: Virginia L. Simmer, RPR

CERTIFIED ORIGINAL  
LEGALINK BOSTON

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1 sentence?

2 A. Yes, I do.

3 Q. When the contract was ultimately signed with  
4 E.J. Sciaba there was a later substantial completion  
5 date than the September 2003 date you referred to in  
6 the preceding paragraph, wasn't there?

7 A. Yes.

8 Q. It was later by two months?

9 A. I don't know the exact duration but I know  
10 there was an extension.

11 Q. Okay. Did Dore and Whittier amend its  
12 agreement with the town for architectural and  
13 construction management services because of the  
14 extension from the September 2003 date you  
15 referenced in Exhibit 19 to the date that was in the  
16 Sciaba contract?

17 A. No, we did not.

18 MS. GRIFFIN: Let's mark this as the  
19 next one.

20 BY MS. GRIFFIN

21 Q. Have you looked at Exhibit 22?

22 A. Yes, I have.

23 Q. On the first page of Exhibit 22 there's a  
24 received stamp by Dore and Whittier, right?

25 A. Yes.

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1 Q. And was Exhibit 22 a document that Dore and  
2 Whittier received from the town as the executed  
3 contract between the town and Sciaba?

4 A. I don't know if we received this from the town  
5 or directly from Sciaba.

6 Q. On the second page of Exhibit 22 does looking  
7 at section 3.3 on page 2 of Exhibit 22 refresh your  
8 recollection as to what the substantial completion  
9 date was under the contract?

10 A. No, I do know that this was extended from the  
11 contract but precisely without looking at the bid  
12 documents I can't tell you what the dates were for  
13 substantial completion that Sciaba initially bid on.

14 Q. Okay. In your -- what I was trying to ask you  
15 was does Exhibit 22 refresh your recollection as to  
16 the date of substantial completion under the  
17 contract?

18 A. Yes, this was the date of substantial  
19 completion under the contract.

20 Q. This being November 17, 2003?

21 A. Well, there's two phases of it but the last  
22 phase of the project by 17 November 2003.

23 Q. In Exhibit 19 where you referred in the second  
24 paragraph to a September 2003 substantial completion  
25 date were you referring there to the substantial



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1 A. Run date of November 20, 2002.

2 Q. Right. That was Exhibit 26; is that right?

3 A. Yes.

4 Q. Did you provide your draft letter of April 21  
5 that we marked as Exhibit 47 to someone at the town  
6 in electronic format?

7 A. I believe it was given to the superintendent  
8 of schools.

9 Q. In electronic format?

10 A. It may have been e-mailed to him. I don't  
11 recall specifically.

12 Q. Can you identify the document that's been  
13 marked Exhibit 48, please?

14 Can you identify Exhibit 48?

15 A. Yes, this is -- looks to be the formal copy to  
16 Ed Sciaba regarding ongoing issues at the high  
17 school project and looking to set up a meeting with  
18 him and his surety.

19 Q. Did you have any conversation with Mr. O'Neill  
20 between the time you sent him your April 21 draft  
21 and the time you got your copy of Exhibit 48?

22 A. May have. I don't recall specifically.

23 Q. Did you talk with anyone else besides Mr.  
24 O'Neill about your draft?

25 A. About our draft?

1 preparation of meeting minutes?

2 A. I believe he did.

3 Q. Let me show you now what's been marked as  
4 Exhibit 54. Can you identify Exhibit 54?

5 A. These are school building committee meeting  
6 minutes of 18 June 2003.

7 Q. Did you prepare Exhibit 54?

8 A. Yes.

9 Q. Did you prepare Exhibit 54 in accordance with  
10 the procedures you've described previously?

11 A. Yes.

12 Q. Do you recall anything being said at the  
13 meeting that is not reflected in the minutes?

14 A. Not that I recall, no.

15 Q. Let me show you a document that's been marked  
16 as Exhibit 55. Can you identify Exhibit 55?

17 A. These would be school building committee  
18 meeting minutes of 6 August 2003.

19 Q. Did you prepare Exhibit 55?

20 A. Yes, I did.

21 Q. Did you prepare Exhibit 55 in accordance with  
22 the procedures you described previously regarding  
23 preparation of meeting minutes?

24 A. Yes, I did.

25 Q. Were the school building committee meetings of

1 August 6, 2003 and June 18, 2003 the only two school  
2 building committee meetings that Rick Anastasio  
3 attended?

4 A. I don't recall specifically. I know he was at  
5 a few. I don't know if it was more than these two  
6 or not.

7 Q. Do you recall any discussion at the August 6th  
8 meeting beyond what is reflected in Exhibit 55?

9 A. I don't recall anything in addition.

10 Q. During the meeting of August 6 there was  
11 discussion about the procedures that were under way  
12 to prepare a request for proposals from new  
13 contractors to come in and complete the work after  
14 Sciaba's default, right?

15 A. Yes.

16 Q. And Mr. Anastasio explained the steps that  
17 were being followed in that process?

18 A. Yes.

19 Q. And at some point along the way did Mr.  
20 Anastasio forward to you drafts of the requests for  
21 proposals?

22 A. I don't recall if he sent them to me directly  
23 or to town counsel or the owner.

24 Q. But you got a set of the drafts and commented  
25 on them, correct?

1 A. I do recall getting a draft. I don't remember  
2 if I commented on them or not.

3 Q. Do you recall having input on the proposed  
4 list of bidders who would receive the RFP?

5 A. Yes.

6 Q. Let me show you what's been marked as Exhibit  
7 56. Can you identify Exhibit 56?

8 A. This appears to be a final list of potential  
9 bidders developed by Mr. Anastasio for the North  
10 Brookfield project.

11 Q. Did you discuss with the town any of the  
12 contractors named on Exhibit 56 as potential  
13 bidders?

14 A. I believe, yes, we did.

15 Q. And following your discussions with them did  
16 the town approve the list of bidders to bid on the  
17 job?

18 A. I believe they did. I think it would have  
19 been included as an approval in meeting minutes  
20 following their review of it.

21 Q. Let me show you Exhibit 57 and ask if you can  
22 identify that. Can you identify Exhibit 57?

23 A. Yes, this is a memo from myself to Rick  
24 Anastasio discussing items for the RFP and the  
25 potential bidders' list.

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1 Q. The date that's on the printed copy of Exhibit  
2 57 says March 9, 2004. Is that a date that you  
3 printed it out for response to a subpoena as opposed  
4 to the date that it was actually prepared?

5 A. I don't know.

6 Q. Well, you know when the RFP went out, right,  
7 and that was in August of '03?

8 A. Yes.

9 Q. Did you prepare and send Exhibit 57 to Mr.  
10 Anastasio before the RFP went out?

11 A. Yes, I believe this was sent to him before the  
12 RFP went out. Just trying to see if there's a date  
13 down here. Draft response 8/14/03.

14 Q. Where do you see that?

15 A. The very bottom. It's right here, draft  
16 response. You have to have your magnifying glass.

17 Q. Okay, the 8 and the 14 are on different lines?

18 A. Correct.

19 Q. Got it. Did Mr. Anastasio address the points  
20 that were outlined in Exhibit 57 before actually  
21 sending the RFP out to bidders?

22 A. I believe he did. I don't recall  
23 specifically.

24 Q. You don't recall thinking that the RFP went  
25 out with any of these still being loose ends, do

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1 you?

2 A. I don't recall that was the case.

3 Q. On item No. 1 on Exhibit 57 you've said the  
4 owner has approved the list of nine contractors that  
5 you've labeled final list, were you referring to  
6 Exhibit 56?

7 A. Final list, 8/13/03, correct, Exhibit 56.

8 Q. Would you take a look at the document that's  
9 been marked Exhibit 59, please.

10 MR. MCENANEY: Excuse me, aren't we at  
11 58?

12 MS. GRIFFIN: Yes, let's do 58 before  
13 we do 59.

14 BY MS. GRIFFIN

15 Q. Here's 58. Have you seen Exhibit 58 before  
16 today?

17 A. I don't recall seeing this before.

18 Q. Do you recall being informed at any time in  
19 2003 that the surety was taking the position that  
20 certain checks that were delivered to Sciaba  
21 provided the surety with a partial defense to the  
22 town's claim on the bond?

23 MR. MCENANEY: Objection.

24 A. I think I recall hearing something about this,  
25 yes.

1 MR. MCENANEY: Objection.

2 A. Not anything specific.

3 Q. Now take a look at Exhibit 59 which I put in  
4 front of you before. Have you seen Exhibit 59  
5 before today?

6 A. Yes, I have.

7 Q. Including the chart which was an enclosure  
8 with it?

9 A. Yes, I have.

10 Q. From whom did you receive Exhibit 59?

11 A. I don't recall specifically but I do recall  
12 having read this before.

13 Q. As a result of reading Exhibit 59 did you do  
14 any analysis?

15 A. I do believe I kind of reviewed some of these  
16 issues that were mentioned in this letter.

17 Q. Okay. Can you explain what you did?

18 A. Sure. First looking at your chart on page 3,  
19 the scheduled value for general requirements of  
20 \$609,000, percent approved 72 percent, amount  
21 over-approved \$200,000. When we looked back at that  
22 we looked at -- general requirements are a little  
23 bit different than other trades and line items in  
24 the schedule of values of the contractors in that  
25 they're more time, contractual time dependent than

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1 in question had been held up due to the fact that we  
2 hadn't received lien waivers on one and then on the  
3 other one we did not receive lien waivers as well as  
4 other issues with it so it was returned to the  
5 contractor.

6 Q. Did you communicate the results of all of the  
7 review and analysis that you've testified to to  
8 somebody else?

9 A. I believe I discussed this with Jim Murray.

10 Q. Did you talk with anybody else about it?

11 A. Not that I can recall specifically other than  
12 Jim.

13 Q. Would you take a look at the document that's  
14 been marked as Exhibit 60, please. Can you  
15 identify -- strike that. Have you seen Exhibit 60  
16 before today?

17 A. Yes, I have.

18 Q. And did you have some input into any of the  
19 either numerical or descriptive portions of Exhibit  
20 60?

21 MR. MCENANEY: Objection.

22 A. I believe I did.

23 Q. Which portions did you have input on?

24 MR. MCENANEY: Objection. Are you  
25 asking him whether he had conversations



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1 utilized in preparation of determining how much  
2 additional fees would be required for basic  
3 architectural engineering services, additional  
4 services, construction management costs, and  
5 reimbursable expenses.

6 Q. Did you initial Exhibit 63 at the bottom?

7 A. Yes.

8 Q. And did you prepare Exhibit 63 on October 28,  
9 2003?

10 A. I initialed it then. I don't know when it was  
11 actually prepared.

12 Q. Did you send it to Mr. McEnaney?

13 A. I don't recall specifically if I did this  
14 particular work sheet.

15 Q. Okay. Did you send Mr. McEnaney something  
16 else with information that showed additional fees  
17 totaling \$579,027.05?

18 MR. MCENANEY: Objection.

19 A. I don't think I sent Mr. McEnaney anything  
20 directly. I would have forwarded this to the school  
21 building committee through their cochair.

22 Q. Let me show you what's been marked as Exhibit  
23 61. Is the bottom part of Exhibit 61 an e-mail that  
24 you were copied on?

25 A. It says I was copied on it, yes.

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1 Q. Do you remember getting it?

2 A. Not specifically.

3 Q. Have you ever seen the top part of Exhibit 61  
4 before today?

5 A. I don't think so.

6 Q. Had you received any calls from Chris Fontaine  
7 of Fontaine Brothers on or about or before November  
8 4, 2003 concerning Fontaine Brothers selection as  
9 the completing contractor?

10 A. I believe I had heard some information from  
11 Fontaine Brothers.

12 Q. Did Chris Fontaine call you?

13 A. I don't know if it was Chris Fontaine or  
14 someone else there. It could have been.

15 Q. What do you remember about that conversation?

16 A. Just that he had thought that they were the  
17 apparent low bidder.

18 Q. Was there anything more to that conversation?

19 A. I believe he was inquiring what the next steps  
20 were, didn't know exactly what the process was going  
21 to be.

22 Q. He didn't or you didn't?

23 A. I didn't.

24 Q. Okay. And do you recall anything else of that  
25 conversation?

1 A. Would you have received invoices from the  
2 town, I mean our invoices to the town?

3 Q. I'm going to -- we can do that now. I have a  
4 stack of invoices that we did receive from the  
5 town. We can mark the -- let's mark this entire set  
6 with the cover letter, the transmittal letter as  
7 Exhibit 67?

8 MR. O'LEARY: Just for the record I'm  
9 reviewing Exhibit 1 and I don't see a  
10 specific request for invoices. I'm not  
11 sure if they were asked for or if they  
12 were produced at this point it was so  
13 long ago. Well, for time records or  
14 anything like that.

15 MS. GRIFFIN: We can review that  
16 after.

17 MR. O'LEARY: Yes.

18 BY MS. GRIFFIN

19 Q. I'm showing you what's been marked as Exhibit  
20 67 and apart from the transmittal letter on the  
21 front of the exhibit can you identify the rest of  
22 Exhibit 67?

23 A. Can you repeat your question?

24 Q. Can you identify Exhibit 67 apart from the  
25 transmittal letter?

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1 A. They appear to be our invoices to the Town of  
2 North Brookfield.

3 Q. On the second to last page of Exhibit 67, this  
4 is part of an invoice dated October 30, 2003, right?

5 A. Yes.

6 Q. And on the second to last page there's a  
7 section starting about halfway down the page called  
8 legal issues GC default, do you see that?

9 A. Yes, I do.

10 Q. On this particular month you were billing the  
11 town for 24 and a half hours of your time; is that  
12 right?

13 A. Yes.

14 Q. And 212 and a half hours of Chris Conway's  
15 time?

16 A. Yes.

17 Q. Did Chris Conway, in fact, keep time  
18 records --

19 A. Yes.

20 Q. -- to back up these billed amounts?

21 A. Yes, he did keep time sheets.

22 Q. Was Mr. Conway working on any other projects  
23 besides North Brookfield during the time he was  
24 working on North Brookfield?

25 A. Very limited. He may have reviewed some plans

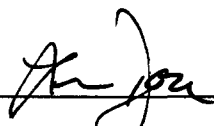
## E R R A T A S H E E T

I, Lee P. Dore, do hereby certify that I have read the foregoing transcript of my deposition taken on April 13<sup>th</sup>, 2005, and further certify that it is a true and accurate record of my testimony (with the exception of the corrections listed below):

Page	Line	Correction
<u>28</u>	<u>6</u>	<u>change AIDBI to "...AIA BI41"</u>
<u>182</u>	<u>11</u>	<u>change Ziembra to "...Zybra"</u>
_____	_____	_____
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Signed under the pains and penalties of perjury this

17<sup>th</sup> day of MAY, 2005.

  
 \_\_\_\_\_  
 Lee P. Dore

## **EXHIBIT 6**

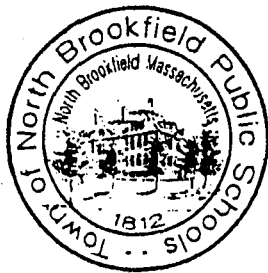
AM 18276

**DEPOSITION  
EXHIBIT**

Dove 48

4-13-05

VS



**North Brookfield Public Schools**  
**Office of the Superintendent**  
 10 New School Drive, North Brookfield, MA 01535  
 Telephone (508) 867-9821 Fax (508) 867-8148  
 e-mail ~ roneill@nbschools.org

23 April 2003

By FAX and Certified Mail

Mr. Edward Sciaba, President  
 Mr. Mike Sheehan, General Superintendent  
 E. J. Sciaba Contracting Co., Inc.  
 18 Wolcott St.  
 Readville, MA 02137

Jean Brooker, Attorney-in-Fact  
 American Manufacturers Mutual Insurance Company  
 One Kemper Drive  
 Long Grove, IL 60049  
 Bond No. 3SE057856

**Project: North Brookfield Junior-Senior High School**  
**DW Project No. 00-404**

Dear Mr. Sciaba:

The Owner formally requests a meeting with you and a representative from your bonding company to be held at the project site to discuss the Contractor's ongoing lack of performance on this project. The original contract between E.J. Sciaba and the Town of North Brookfield required that the new school building be substantially complete by November 17, 2003 (this was extended by Change Order No. 3 to December 15, 2003). It has become apparent that this date may not be achieved; therefore we are requesting this meeting to discuss the following issues:

1. It has been one full year since the Notice to Proceed was issued and accepted by E.J. Sciaba Contracting, Inc. The project should be 72% complete at this point according to the Architect's projected drawdown schedule for the project. Based on an analysis of billings to date the project is only 35% complete (attached). Please note that E.J. Sciaba has still failed to issue a projected drawdown schedule for the project as required by the contract documents (Instructions to Bidders Paragraph K, Item 2 and the Notice of Intent dated March 14, 2002). A projection based upon the average requisition billing to date indicates that the project will not be completed until January, 2005, more than one year after the completion time required by the contract.
2. The Contractor has failed to provide adequate staffing and labor forces for this project in order to complete the project by the dates prescribed by the contract documents (General Conditions 8.2.1 and 8.2.3).

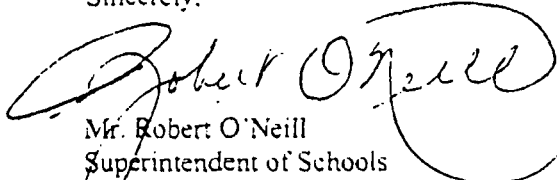
- AM 18277
3. The Contractor repeatedly has failed to provide Proposal Request pricing information within a reasonable time pursuant to section 7.3.6 of the General Conditions of the contract. The Owner and Architect have issued two Construction Change Directives (CCD #5 & CCD #7) with pricing established following the protocols of the contract documents in order for this work to continue without affecting the ongoing sequencing of work. The Contractor has been notified repeatedly that another Construction Change Directive will be forthcoming for Proposal Requests that remain unanswered by the Contractor for over the past three months.
  4. The Owner remains concerned that information approved by the Owner and Architect in the form of Construction Change Directives or approved Change Orders are not being forwarded to the appropriate subcontractors for expeditious completion of this work.
  5. There continues to be claims made by subcontractors regarding the apparent lack of payment for completed work approved and paid in Requisitions to the Owner from the General Contractor. Delay claims have been filed with the General Contractor from subcontractors due to delays in the sequencing of work because of GC non-performance. The Owner has received claims from the following subcontractors for lack of payment and/or demands for direct payment:
    - a. Greenwood Industries, Inc.
    - b. Mark Equipment
    - c. American Equipment
    - d. Dominion Rebar
    - e. Holyoke Equipment
    - f. Millis Plumbing
    - g. Griffin Electric
  6. Failure to provide updated monthly construction schedules as required by the contract documents. The latest project schedule was received by the Owner and Architect on December, 2002 (run date of November 20, 2002).
  7. Non-attendance by the Contractor's project manager at job meetings even after meetings have been re-scheduled at the request of E.J. Sciaba's project manager. The project manager has failed to attend the past two on-site project meetings, which makes it difficult or impossible to discuss issues that affect the ongoing progress of work.
  8. Almost every Application for Payment to date has had inadequate documentation or mistakes. The latest payment application was returned to the Contractor uncertified by the Architect due to mistakes (that have been consistently brought to the Contractor's attention) and improper documentation which is specifically listed in a different letter (separate cover) to the Contractor citing the reasons for non-certification of the application.
  9. Ongoing history of subcontractors and E.J. Sciaba's own forces demobilizing and leaving the job site due to the apparent lack of payment to subcontractors and/or union benefits which in turn have had serious ramifications to the project schedule.
  10. The project schedule calls for the roofing system to have a late finish of 10 March 2003. The roofing system hasn't begun yet and it is 21 April 2003. Overhead power and lighting is scheduled to be complete (late finish) in each of the three sections of the building by 28 April 2003. It hasn't begun yet. Interior masonry walls were scheduled as a late finish of April 7, 2003 – they have not started (with the exception of the elevator shaft wall). These are several specific examples of the non-conformance with the Contractor's submitted project schedule. To date we



find it difficult to account for a single critical milestone date that has been achieved per the project schedule. At every job meeting we are told to expect progress and are later discouraged to realize that none or very little has been made. Lack of proper project administration by the Contractor and insufficient labor forces are the 'norm' for this project to date. The latest schedule submission (December, 2002) indicates substantial completion of the building will be achieved by September 17, 2003. We believe that based on current Contractor performance and the past history of non-performance to date, that this project will not be completed within that time frame.

We request the attendance of both Mr. Edward Sciaba and a representative of the Contractor's Bonding Company (American Manufacturers Mutual Insurance Company) on **Wednesday May 7, 2003 at 1PM** at the project site to discuss these issues and the Contractor's intentions for corrective action in carrying out the work and project schedule as defined by the Contract Documents. We also request once again that the Contractor provide an updated project schedule prior to this meeting for review. Please confirm your attendance at this meeting in writing.

Sincerely,



Mr. Robert O'Neill  
Superintendent of Schools  
North Brookfield School District

c: Lee P. Dore, Dore and Whittier, Inc. (Fax 802-863-6955)  
Aon Risk Services, Inc. of Massachusetts (Fax 617-457-7777)  
Jim Murray, Co-Chair - Building Committee (Fax 978-897-0779)  
R. John Dore, Dore and Whittier, Inc.  
Chris Conway, Construction Manager  
Thomas W. McEnaney, Kopelman and Paige, P.C. April 23, 2003

## **EXHIBIT 7**

Ex 145



May 30, 2003

Robert O'Neill  
Superintendent of Schools  
North Brookfield Public Schools  
10 New School Drive  
North Brookfield, MA 01535

*Re: North Brookfield Intermediate & Senior High School Project*  
*DW Project No.: 00-404*  
*Surety: American Manufacturers Mutual Insurance Co.*  
*Bond No.: 3SE 057 856*  
*Claim No.: 167-SE-002-989*

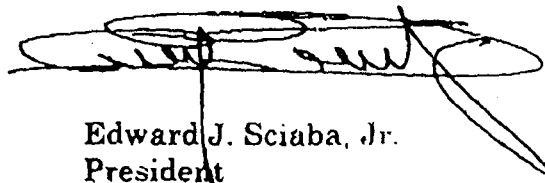
Dear Mr. O'Neill:

Due to circumstances beyond our control, we regret to advise you that we are unable to complete the captioned contract. We, accordingly, hereby irrevocably acknowledge that we are declaring a voluntary default for convenience on said contract and waive any notice required under the contract documents.

We request that you discuss with our surety the matter of completing this contract.

Very truly yours,

E.J. SCIABA CONTRACTING COMPANY, INC.



Edward J. Sciaba, Jr.  
President

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